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In re Patent of Baerlocher	:	OFFICE OF PETITIONS
Patent No. 7,806,760	:	
Issue Date: October 5, 2010	:	DECISION ON REQUEST
Application No. 10/649,091	:	FOR RECONSIDERATION OF
Filed: August 27, 2003	:	PATENT TERM ADJUSTMENT
Docket No.: 0112300-1411	:	

This is a decision on the petition filed on December 6, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred ninety-five (1695) days.

The petition under 37 CFR 1.705(d) is **granted to the extent indicated herein.**

Patentee states that the Office delay of 1965 days appear to be overstated, resulting in the total PTA being longer than appropriate.

The period of Office delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") is 640 days.

The period of Office delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 1304 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, no RCE was filed. The maximum period of B Delay in this case is 1500 days, which is the number of days beginning August 28, 2006, the day after the date three years after the application's filing date, and ending October 5, 2010, the day the patent issued. Eighty five days are subtracted from the maximum period of B delay because they are overlapping with A Delay days ((November 26, 2006 - January 29, 2007) and (December 5, 2008 - December 24, 2008)).

As stated in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." A Notice of Appeal was filed on December 23, 2009 and the Office mailed a Notice of Allowance on April 12, 2010. Excluding the 111 days consumed by appellate review (beginning December 23, 2009, the date the Notice of Appeal was filed, and ending April 12, 2010, the day the Notice of Allowance was mailed) results in a period of B delay of 1304 days (1500 - 85 - 111).

The Office concurs that the period of Applicant delay is 250 days.

In light of the above, the patent term adjustment should be 1694 days, which is the sum of 640 days of A delay and 1304 days of B delay, reduced by 250 days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by one thousand six hundred ninety-four (1694) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

A handwritten signature in cursive script, reading "Shirene Willis Brantley".

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: copy of draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,806,760 B2

DATED : October 5, 2010

DRAFT

INVENTOR(S) : Baerlocher

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1715 days

Delete the phrase "by 1715 days" and insert – by 1694 days--